IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 15481 of 2003

For Approval and Signature:

HONOURABLE MR.JUSTICE S.R.BRAHMBHATT

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1 Whether Reporters of Local Papers may be allowed to see the judgment ? YES

2 To be referred to the Reporter or not ? NO

3 Whether their Lordships wish to see the fair copy of the judgment ? NO

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ? NO

5 Whether it is to be circulated to the civil judge ? NO

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RANCHHODJI MODJI JADEJA - Petitioner(s)
Versus
SHANKAERBHAI PARMABHAI CHAUDHARI & 3 - Respondent(s)

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Appearance :

MR APURVA R KAPADIA for Petitioner(s) : 1,
RULE SERVED BY DS for Respondent(s) : 4.
MR MURALI N DEVNANI for Respondent No. 1 (not present)
MR HS MUNSHAW for Respondent(s) : 2 & 3,

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CORAM : HONOURABLE MR.JUSTICE S.R.BRAHMBHATT

Date : 19/11/2007

ORAL JUDGMENT

The petitioner who was working as C.R.C. Co-ordinator at Korda, Tal. Santalpur,

District Patan, approached this Court under Article 226 of the Constitution of India challenging the action of the respondent State in not appointing him as B.R.C. Co-ordinator, Varahi, Tal. Santalpur, Dist. Patan and appointing respondent No. 1 as B.R.C. Co-ordinator, Varahi (Santalpur) vide order dated 5.7.2003, on the ground that the petitioner was eligible and had scored more marks in the selection procedure than respondent No. 1 and yet he was denied the appointment.

2. Facts in brief deserve to be set out as under:

3. The petitioner who was working as C.R.C. Co-ordinator at Korda, Taluka Santalpur, has offered his candidature for appointment to the post of B.R.C. Co-ordinator pursuant to the public invitation placed on record at page 12 whereunder under D.P.E.P.

Project appointments were required to be made on the basis of deputation from amongst the C.R.C. Co-ordinators/Primary Teachers working in Banaskantha District. The petitioner was called for interview vide letter dated 6.3.2003. However, the interviews were not conducted and subsequently, he was called for interview on 4.6.2003. The petitioner was not appointed, though was eligible, and one Shri Shankarbhai Parmabhai Chaudhary – respondent No. 1 came to be appointed on the said post. Being aggrieved by the action of the respondents, the petitioner preferred writ petition being Special Civil Application No. 9941 of 2003 wherein this Court (Coram: H.K. Rathod, J) on 15.7.2003 directed the respondents to consider the representation of the petitioner and pass appropriate order in accordance with law within two months from the date of the receipt of the representation from the petitioner. The petitioner accordingly

made representation which is produced at page 38. The same was rejected by the concerned authorities vide order dated 9-10/9/2003. It appears that the representation was rejected by the District Project Co-ordinator and District Primary Education Officer, Patan, mainly on the ground that the petitioner was appointed as C.R.C. Co-ordinator by Palanpur Office. He was directed to make appropriate representation to the competent authority. The petitioner did not prefer further representation and moved this Court. The petitioner also preferred a Civil Application being Civil Application No. 10572 of 2007 in Special Civil Application No. 15481 of 2003 for direction as respondent No. 1 who was appointed and whose appointment was also under challenge in this petition, came to be transferred to Harij as Primary Teacher upon his own request and the post held by him of B.R.C. Co-ordinator had fallen vacant. Along

with this application, the petitioner annexed an order dated 27.4.2007 issued by the District Primary Education Officer, District Panchayat, Patan, informing him that his representation dated 1.4.2007 for his appointment cannot be accepted as out of the select list a candidate i.e. respondent No. 1 had been appointed and thus that list had been exhausted. The petitioner has produced along with the said application the proceedings of the Selection Committee and the assessment sheet whereunder the Selection Committee allocated marks under different heads to the candidates. The petitioner, out of 100 marks, obtained 38 marks that is the highest mark whereas respondent No. 1 whose appointment is under challenge in the present petition, obtained total 27 marks out of 100 marks. The respondents have not denied this fact by filing any affidavit in reply. Mr. Munshaw, learned advocate for the respondents, did not

deny this fact that the petitioner obtained highest marks in the selection procedure and respondent No. 1 obtained only total 27 marks out of 100 marks. The petitioner has been, thus, aggrieved by the inaction on the part of the respondents in not offering him appointment to the post of B.R.C. Co-ordinator, Varahi (Santalpur).

4. Heard learned counsel for the parties. Shri Kapadia, learned counsel for the petitioner, submitted that though the appointment was to be made on the basis of deputation, however, the respondents have no right to deny the appointment to the present petitioner especially when an exercise was undertaken to select appropriate, suitable candidate for manning the post of B.R.C. Co-ordinator, Varahi (Santalpur) and the petitioner was required to undergo selection procedure wherein he has secured highest

marks. Shri Kapadia, learned counsel, has further submitted that respondent No. 1 is now no more interested in continuing on the post as at his own request he has been transferred from that post to other place as Primary Teacher and the post is lying vacant.

5. Shri Munshaw, learned counsel for respondent Nos. 2 and 3, has submitted that the post was to be filled up on the basis of deputation from amongst the C.R.C. Co-ordinators/Primary Teachers. The post of B.R.C. Co-ordinator was under a project and therefore the present petitioner has no right to claim to be appointed on the said post. Shri Munshaw has submitted that respondent No. 1 who came to be appointed as B.R.C. Co-ordinator at Varahi (Santalpur) had admittedly possessed better qualification than the petitioner and therefore the appointing authority in exercise of its right, appointed

respondent No. 1 in the interest of administration. Shri Munshaw, however, could not deny the fact that the petitioner was absolutely eligible and as he was eligible he was called for interview and selection procedure. Shri Munshaw also could not deny the fact that the petitioner has, in fact, obtained 38 marks out of 100 marks whereas respondent No. 1 has only obtained 27 marks out of 100 marks and therefore in the overall selection procedure the petitioner was found to be more meritorious as he obtained more marks than respondent No. 1. However, Shri Munshaw submits that the post was essentially one under the project and therefore in case the Court is inclined to accept the petition and issue appropriate direction then this factor may be noted and appropriate direction be issued accordingly.

6. This Court has heard the counsel for

the parties and perused the record. This petition deserves to be allowed only on the ground that the petitioner and respondent No. 1 both were eligible and both were subjected to detailed selection procedure. The Selection Committee have assessed the performance and suitability of all the candidates for the post of B.R.C. Co-ordinator. Detailed marking procedure was followed and under as many as 17 heads marks were allotted. It is important fact to be noted that the petitioner, out of 100 marks, has obtained 38 marks whereas respondent No. 1 could obtain only 27 marks out of 100 marks. Thus, as per the selection procedure, it could be said that the petitioner was admittedly more meritorious candidate than respondent No. 1. A question arises as to whether the appointing authority is justified in ignoring the overall assessment of the Selection Committee and choosing a candidate who is admittedly

assessed to be a lesser meritorious than the one who is making grievance only on account of better educational qualification, the answer would be obviously “no”. The appointing authority's right and prerogative need to be weighed in all the selection procedure, recruitment Rules and eligibility criteria. When a detailed selection procedure is prescribed and a scientific method is adopted reducing the arbitrariness to the minimum in selection procedure and elaborate classification is made for assessing the candidates on various aspects, the appointing authority cannot be said to have any right to choose out of them only one candidate who is admittedly not assessed to be the best by the Selection Committee. Such picking and choosing would amount to arbitrary exercise of the power of appointment which is diametrically opposite to the rule of law and principle of accountability enshrined in Articles 14 and 16

of the Constitution of India. Therefore, this Court has no hesitation in coming to the conclusion that the respondents have wrongfully denied appointment to the petitioner to the post of B.R.C. Co-ordiator at Varahi (Santalpur) pursuant to the selection procedure.

7. Having come to the conclusion that the petitioner had wrongfully been denied appointment to the post of B.R.C. Co-ordinator, Varahi (Santalpur), a question comes as to whether at this stage the respondents be directed to appoint the petitioner on the basis of the selection procedure as at the relevant time selection procedure had been completed and the select list was exhausted as respondent No. 1 came to be appointed on a post on deputation basis run under a project. Ordinarily, directions to appoint are not to be issued as it may amount

to denying chance of being considered to other aspirants to the post who has become eligible in the meantime. However, this factor needs to be juxtaposed with a situation where a candidate like the present petitioner who has secured highest marks in the elaborate selection procedure was wrongfully denied an opportunity of being appointed as B.R.C. Co-ordinator, Varahi (Santalpur). When such a wrongful action has resulted into injustice to the petitioner, the same deserves to be redressed under Article 226 of the Constitution . Therefore, this Court is unable to accept the submission of Shri Munshaw that in case the petitioner is found to be more meritorious on the basis of the mark sheet prepared by the Selection Committee then also there has to be direction for fresh selection procedure. In the instant case, as it is stated hereinabove, the petitioner who was eligible and who obtained highest marks under

selection proceeding and who was at serial No. 1 in the merit list could not have been ignored and respondent No. 1 could not have been preferred on the sole ground that respondent No. 1 possessed better qualification. It is not the case of the respondents that petitioner in any way lacked in possessing the requisite qualification. On the contrary, it is the case of the respondents that all the candidates who are called for selection procedure did fulfill the requisite criteria of educational qualifications. In view of this, the petition deserves to be allowed.

8. It also deserves to be borne in mind that the post of B.R.C. Co-ordinator, Varahi (Santalpur) was under a project and therefore the direction is required to be given in favour of the petitioner only if the project is continuing and in the meantime the

petitioner has not incurred any positive disqualification for being appointed as B.R.C. Co-ordinator, Varahi (Santalpur).

9. It also requires to be noted that the appointment of respondent No. 1 ought to have been required to be quashed and set aside in the light of the aforesaid observation. However, in the peculiar facts and circumstances of the case as respondent No. 1 has already been transferred at his own requested and the post is lying vacant, the Court is not inclined to quash the appointment of respondent No. 1 otherwise it would amount to taking away the benefits which he has received after his appointment but as on date as the post is vacant as stated by the counsel of the petitioner and the project is continuing, the following directions deserve to be issued in the interest of justice.

10. Respondent No. 3 is hereby directed to appoint the present petitioner as B.R.C. Co-ordinator pursuant to the selection procedure wherein the petitioner obtained highest marks. Respondent No. 3 has to appoint the petitioner only in case the project is continuing and the post is available for making appointment.

11. The terms and conditions of the appointment to the post of B.R.C. Co-ordinator shall remain as it was stipulated originally.

12. The petition stands allowed. Rule is made absolute to the aforesaid extent.

(S.R. BRAHMBHATT, J)

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